

Attorney's Docket: 2002DE130
Serial No.: 10/656,313
Group: 1713

REMARKS

The Office Action mailed January 25 2005, has been carefully considered together with each of the references cited therein. The amendments and remarks presented herein are believed to be fully responsive to the Office Action. The amendments made herein are fully supported by the Application as originally filed. No new matter has been added. Accordingly, reconsideration of the present Application in view of the above amendments and following remarks is respectfully requested.

CLAIM STATUS

Claims 1-42 are pending in this Application. By this Amendment, claim 1 has been amended to clarify the subject matter which Applicants regard as the invention. Claim 41 has been amended to correct a typographical error. Claims 6-16, 18-20 and 24-39 have been cancelled, without prejudice to filing a division thereon. The claims under consideration are, therefore, believed to include claims 1-5, 17, 21-23 and 40-42.

The basis for the amendment to claim 1, defining the dust reduction additive as non-aqueous can be found, *inter alia*, in Examples 5-8 (pages 22 and 23) and Example 10 (page 23). In such Examples, the dust reduction additive is Genepol® 2822 which is water free.

Elections/Restrictions

The Office has restricted the Application to one of the following inventions under 35 USC § 121:

- I. Claims 1-23 and 39-42,
- II. Claims 24-26 and
- III. Claims 27-28.

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The Office has also required Applicants to elect a single disclosed species for the organophosphorus flame retardant and dust-reduction additive.

Applicants elect Group 1, claims 1-23 and 39-42, without traverse. The elected species for the organophosphorus flame retardant is formula (I) as described in claim 2, and the elected species for the dust-reduction additive is alkyalkoxylates as described in claim 17. It is believed that all of the claims 1-5, 17, 21-23 and 40-42 read on the elected species.

Specification

The disclosure stands objected to because alkyalkoxylates on page 6 line 28 is misspelled. Such misspelling has been corrected.

Claim Objections

Claim 23 stands objected to as the ratio 1:999 is a typographical error. Claim 23 has been amended to recite a ratio of 1:99.

Claim Rejections Under 35 USC § 103

Claims 1-5, 17, 23 and 42 stand rejected under 35 USC § 103(a) as being unpatentable over Jenewein et al. (US Pat. 6,365,071) in view of Pullen et al. (US Pat. 6,124,366). This rejection is respectfully overcome.

Applicants' invention, as defined by amended claim 1, is directed to pulverulent flame-retardant composition with low dust level which includes an organophosphorus flame retardant and a dust reduction additive. The dust reduction additive is non-aqueous.

The Office takes the position that Jenewein et al. disclose a synergistic flame retardant combination while Pullen et al. "teaches chemical additives to assist in dust reduction in an aqueous fluid useful for the suppression of dust and the enhancement of wetting characteristics of a surface." The Office then concludes that "person of ordinary skill in the art would have recognized the suitability of utilizing a chemical additive in a fluid to assist in dust reduction".

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Courteously stated, Applicants' invention, as defined by the amended claims, can not be made obvious by any combination of Jenewein and Pullen et al., as Pullen et al. specifically teach an aqueous solution for dust control. See, *inter alia*, the Abstract; column 3, lines 5 and 6; column 3, line 54 and column 4, line 50. This is in direct contrast to that which is claimed by Applicants, as claim 1 now specifically recites that the at least one reduction additive is non-aqueous.

For one with ordinary skill in the art to contemplate the combination as advanced by the Office, such artisan would necessarily have to abandon the expressed teachings of Pullen et al. Thus, an ordinary artisan having a knowledge of the cited references would have an express disincentive to alter the teachings of the prior art in a manner necessary to arrive at the instantly claimed invention absent the use of impermissible hindsight gained by a knowledge of Applicants' disclosure.

For at least this reason, Applicants respectfully contend that the claims as amended are not made obvious by any combination of Jenewein and Pullen et al.

Claims 21, 22, 40 and 41 stand rejected under 35 USC § 103(a) as being unpatentable over Jenewein et al. (US Pat. 6,365,071) in view of Pullen et al. (US Pat. 6,124,366) and further in view of Gareiss et al. (US Pat. 6,084,012). As such claims depend directly from claim 1, this rejection is respectfully overcome for at least the reason advanced with respect to the § 103 rejection based upon Jenewein et al. in combination with Pullen et al.

In view of the above, it is respectfully contended that the 35 USC § 103 rejections have been overcome. In consequence, Applicants respectfully request reconsideration and withdrawal of the rejection.


As the total number of claims does not exceed the number of claims originally paid for, no fee is believed due. However if an additional fee is required, the Commissioner is hereby authorized to credit any overpayment or charge any fee deficiency to Deposit Account No. 03-2060.

In view of the forgoing amendments and remarks, the present application is believed to be in condition for allowance, and reconsideration of it is requested. If

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the Examiner disagrees, she is requested to contact the attorney for Applicants at the telephone number provided below.

Respectfully submitted,


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